

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653(KRH)
.
.
CIRCUIT CITY STORES, .
INC., . 701 East Broad Street
.
Richmond, VA 23219
.
Debtor. . July 23, 2009
.
11:05 a.m.

TRANSCRIPT OF MOTION HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

APPEARANCES:

For the Debtor: McGuireWoods LLP
By: DOUGLAS FOLEY, ESQ.
DANIEL F. BLANKS, ESQ.
9000 World Trade Center
101 W. Main Street
Norfolk, VA 23510

McGuireWoods LLP
By: DION W. HAYES, ESQ.
JOSEPH S. SHEERIN, ESQ.
SARAH BECKETT BOEHM, ESQ.
One James Center
901 East Cary Street
Richmond, VA 23219

Skadden Arps Slate Meagher
& Flom LLP
By: IAN FREDERICKS, ESQ.
GREGG M. GALARDI, ESQ.
One Rodney Square
Wilmington, DE 19899

Proceedings recorded by electronic sound recording, transcript
produced by transcription service

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Contd'):

For the Official
Committee of Unsecured
Creditors:

Pachulski Stang Ziehl & Jones, LLP
By: BRAD R. GODSHALL, ESQ.
JEFFREY N. POMERANTZ, ESQ.
10100 Santa Monica Blvd., 11th Floor
Los Angeles, CA 90067

Pachulski Stang Ziehl & Jones, LLP
By: ROBERT J. FEINSTEIN, ESQ.
780 Third Ave., 36th Floor
New York, NY 10017

Pachulski Stang Ziehl & Jones, LLP
By: JOHN D. FIERO, ESQ.
150 California Street, 15th Floor
San Francisco, CA 94111

Tavener & Beran, PLC
By: LYNN L. TAVENNER, ESQ.
PAULA S. BERAN, ESQ.
20 North Eighth Street, Second Floor
Richmond, VA 23219

By: ALAN J. KORNFELD

By: GILLIAN N. BROWN

For U.S. Trustee:

Office of the U.S. Trustee
By: ROBERT V. VAN ARSDALE
701 East Broad Street, Suite 4302
Richmond, VA 23119

For AAC Cross County
Mall LLC:

Kelley Drye & Warren LLP
By: ROBERT L. LeHANE, ESQ.
101 Park Avenue
New York, NY 10178

1 THE CLERK: All rise. United States Bankruptcy Court
2 for the Eastern District of Virginia is now in session. The
3 Honorable Kevin R. Huennekens presiding. Please be seated and
4 come to order.

5 UNIDENTIFIED SPEAKER: In the matter of Circuit City
6 Stores, Incorporated, hearings on Items 1 through 71 as set out
7 on debtor's agenda.

8 MR. FOLEY: Good morning, Your Honor. Doug Foley
9 with McGuireWoods on behalf of the debtors.

10 THE COURT: Good morning.

11 MR. FOLEY: With me at counsel table is Chris
12 Dickerson from Skadden Arps and Ian Fredericks from Skadden
13 Arps, as well. Also with me from my firm is Dan Blanks from
14 McGuireWoods. Your Honor, from the company we have here today
15 Jim Markham, CEO, and Deborah Miller who's assistant general
16 counsel. Your Honor, the agenda, although it's long, we hope
17 it won't occupy most of the Court's calendar today what we've
18 been able to resolve.

19 THE COURT: I was counting on that.

20 MR. FOLEY: Yes, I know. The first several items,
21 Your Honor, there's been a couple adjustments. Rather than
22 file another agenda we just figured we'd address those in open
23 court.

24 THE COURT: That would be fine.

25 MR. FOLEY: Your Honor, Items 1 through 7, these are

1 the motion of CC Hamburg New York Partners for entry of an
2 order granting allowance and compelling payment of
3 Administrative Expense Claim Item Number 1. That's been
4 resolved and can be removed from the docket.

5 Item Number 2 is a motion for relief from automatic
6 stay by Nina Winston. That has been resolved and can be
7 removed from the docket. Item Number 3 is the Wells Fargo
8 motion for relief from stay. That's been resolved and can be
9 removed from the docket. Item Number 4, Your Honor, this is
10 one where we have -- need to make an adjustment. This is
11 resolved in principle, but we're not quite there yet. I spoke
12 to Mr. Savanko (phonetic) this morning, counsel for the movant,
13 and we're still working through that. So, rather than show
14 that one as resolved and removed from the docket we would ask
15 that the Court carry that over to the August 27th hearing date.

16 THE COURT: It'll be carried over.

17 MR. FOLEY: Your Honor, Item Number 5, this is the
18 Dale City Motion for allowance and payment of administrative
19 priority claim. That has been resolved and can be removed from
20 the docket. Item Number 6 is motion of Teachers Insurance
21 Annuity Association for immediate payment of administrative
22 rent claims. That has been resolved and can be removed from
23 the docket.

24 Number 7 is motion of Market Heights, LTD for
25 allowance and payment of administrative rent claims. Again,

1 that's been resolved and can be removed from the docket. Your
2 Honor, Item Number 28 we show on the docket as being adjourned
3 to the August 27th hearing date, however, yesterday we were
4 able to also completely resolve that motion. That's the motion
5 of Team Retail Westbank, LTD for allowance and immediate
6 payment of administrative rent claims. That can be shown as
7 resolved and withdrawn from the docket, Your Honor.

8 THE COURT: It's Item Number 28?

9 MR. FOLEY: 28.

10 THE COURT: All right. That's been resolved. Very
11 good.

12 MR. FOLEY: Your Honor, that brings us to the matters
13 that we are seeking further adjournment. Again, Item Number 8
14 is a matter we've been carrying for a long time. This relates
15 to our motion to approve sell-down procedures and trading
16 equity securities and claims against the debtor's estates.
17 This may have some impact when it comes to plan confirmation
18 time, so, Your Honor, we're asking that that matter be
19 adjourned until the September 22nd hearing date, Your Honor.

20 THE COURT: All right. Very good.

21 MR. FOLEY: Your Honor, Item Number 9, this is -- and
22 10, this is the Motorola motion for allowance and payment of a
23 503(b)(9) claim and the General Instruments Home and Networks
24 Mobility doing business as Motorola. Those two motions, the
25 movant has requested that they be adjourned once again to the

1 August 27th hearing date. So, we would ask that be noted on
2 the docket.

3 THE COURT: Okay. Both 9 and 10 will be moved to
4 August 27.

5 MR. FOLEY: Your Honor, Item Number 11, this is the
6 motion by Federal Warranty and Assurant with respect to
7 compelling assumption or rejection and in the -- for relief
8 from the automatic stay. As Your Honor is aware from the
9 previous hearings, we are -- we've been in negotiations with
10 these parties and it got delayed as a result of having to bring
11 in a third party to complete the negotiations, a party that
12 was -- GE -- that was involved in the chain of the underwriting
13 with respect to these warranty contracts.

14 We now have that party at the table and we're very
15 close to a global resolution that we think will result in a
16 substantial recovery for the estate. Because those
17 negotiations are still ongoing and we hope to finish them this
18 week, we're asking, with Federal Warranty's consent, to adjourn
19 this matter again to the August 27th hearing date.

20 THE COURT: All right. That'll be adjourned.

21 MR. FOLEY: Your Honor, we actually hope to have this
22 motion -- this global settlement approved pursuant to what we
23 hope Your Honor will approve our -- the settlement procedures
24 that are on later in the docket.

25 Your Honor, Item Number 12, this is our lease

1 disposition procedures motion. As Your Honor is aware, there
2 were several unresolved objections. At this point Items Number
3 12(b), Gateway Centers, 12(c), Whitestone Development, and
4 12(d), Union Square Retail Trust, those are all resolved. The
5 only one that remains unresolved is 444 Connecticut Avenue, and
6 they have consented to further adjourn that to the August 27th
7 hearing date. It involves the matter of attorneys fees and
8 cure obligations, Your Honor.

9 THE COURT: Very good.

10 MR. FOLEY: Your Honor, Item Number 13, this is
11 DIRECTV's motion for setoff and for relief from the automatic
12 stay. They have requested and we have agreed to further
13 adjourn their motion to the August 27th hearing date. We are
14 in -- continue to be in global settlement discussions with
15 them. We've exchanged a preference exposure analysis that we
16 want them to take a look at. We've agreed that to the extent
17 we cannot reach a global resolution by August 27th hearing date
18 we will focus solely on the relief that's requested in the
19 motion and just try to get this one resolved so we can take it
20 off the docket.

21 THE COURT: All right. Very good.

22 MR. FOLEY: Your Honor, Item Number 14, this is Sony
23 Pictures Home Entertainment motion for 503(b)(9) claim. They
24 are reconciling certain accounts receivable that the estate
25 believes it has against Sony, and they need time to digest

1 that. We hope, again, to reach a global settlement with them,
2 but they've requested, and we've agreed, to adjourn the matter
3 to the August 27th hearing date.

4 THE COURT: That'll be adjourned.

5 MR. FOLEY: Your Honor, Items Number 15, 16, 17 and
6 18, these are all motions for allowance of late filed claim.
7 15 is export development, Canada's motion to allow a late
8 filing of an administrative claim. 16 is the Vertis motion
9 for -- to allow a late claim. 17 is Mr. Chalifoux's motion to
10 file a late claim, and Number 18 is Sennheisser Electric
11 Corporation's motion to file late claim and a 503(b)(9) claim.

12 Your Honor, all of these parties have agreed that
13 it's not right to hear these yet, and so with respect to 15,
14 16, they've agreed to adjourn their motions till the August
15 27th hearing date. With respect to Item Number 17, this is Mr.
16 Chalifoux's motion. He's agreed to adjourn that matter till
17 the September 22nd hearing date. And with respect to Number
18 18, Sennheisser Electric Corp., that -- they've agreed to
19 adjourn their matter to August 27th, Your Honor.

20 THE COURT: All right. Very good.

21 MR. FOLEY: Item Number 19, Your Honor, this is the
22 SouthPeak motion. There is a pending claim objection with
23 respect to that that corresponds with this motion. We're
24 trying to reconcile their claims. They've agreed to adjourn
25 this motion until the August 27th hearing date.

1 THE COURT: All right.

2 MR. FOLEY: Your Honor, Item Number 20, this is the
3 Newport News -- City of Newport News' motion for payment of
4 certain tax claims. We filed a response to that, Your Honor.
5 Some of these claims are actually pre-petition claims. They're
6 not administrative. They've agreed with some of that analysis.
7 They're still -- we're still working through that with them,
8 but they've agreed and asked us to represent to the Court that
9 they would like their motion adjourned for further settlement
10 discussions until the August 27th hearing date.

11 THE COURT: All right.

12 MR. FOLEY: Your Honor, Item Number 21 and 22 are
13 landlord related motions. Number 21 is Bond Circuit TV
14 Delaware Business Trust to compel payment of administrative
15 claim, and 22 is Myrtle Beach Farms Company, Inc. also seeking
16 payment of administrative claims. Both of those movants have
17 requested so that we can try to reconcile what they believe is
18 owed until the August 27th hearing date with the debtor
19 response if needed on August 20th, Your Honor.

20 THE COURT: Very good.

21 MR. FOLEY: Item Number 23, this is Infogain's motion
22 for an administrative claim. We filed a preliminary response
23 to that, Your Honor. We're working through some of the legal
24 issues and factual issues with them. Their counsel was not
25 available on the August 27th hearing date. They've requested

1 that their motion be adjourned till the September 22nd hearing
2 date, Your Honor.

3 THE COURT: It'll be adjourned to 22nd September.

4 MR. FOLEY: Your Honor, Item Number 24, this is the
5 amended motion of Site A, LLC for payment of an administrative
6 claim. We're continuing to work through the issues them, and
7 they've requested that their motion be adjourned till the
8 August 27th hearing date.

9 THE COURT: All right.

10 MR. FOLEY: Item Number 25, Your Honor, this is Towne
11 Square Plaza's motion for -- to amend their proof of claim and
12 to file a late proof of claim. Similar to the previous
13 motions, Your Honor, they've agreed to adjourn their motion
14 till the August 27th hearing date.

15 THE COURT: All right.

16 MR. FOLEY: Your Honor, Item Number 27 -- 26 and 27
17 are, again, both, I believe, landlord motions; Slam Brands'
18 motion for administrative claim and Columbus Dispatch --
19 actually these are not landlords, Your Honor. Columbus
20 Dispatch is a newspaper and Slam Brands, I believe, is a
21 vendor. They both agreed to give us some time to reconcile the
22 amounts that are alleged owed under these motions, and so
23 they've requested, and we've agreed, to adjourn their motions
24 till the August 27th hearing date.

25 THE COURT: All right. That'll be adjourned.

1 MR. FOLEY: Your Honor, Item Number 28 has been
2 resolved and removed from the docket. Your Honor, that brings
3 us to the uncontested matters that are on the agenda. Item
4 Number 29, this is, again, our motion to extend the exclusive
5 period under 1121(b) and (c), Your Honor. We appreciate Your
6 Honor entering a bridge order carrying us to this hearing. The
7 relief that we're requesting at this point is to extend the
8 exclusivity period for the debtors and the Committee until July
9 31st, next Friday, and the solicitation period till September
10 29th. And we have not received any objections to the relief
11 requested and we would ask the Court to go ahead and enter the
12 order granting the full relief that we sought in the motion.

13 THE COURT: Does any party wish to be heard in
14 connection with the debtor's motion to extend exclusivity? All
15 right. That motion will be granted.

16 MR. FOLEY: Thank you, Your Honor. Item Number 30 is
17 a request to seek approval of a stipulation relating to a piece
18 of property in Salem -- Rockingham, Salem, New Hampshire --
19 Salem, Rockingham in New Hampshire. This involves a piece of
20 real estate, Your Honor, that we originally owned and then sold
21 and then leased back. There was some ministerial obligations
22 that we had to convey title under a 1992 lease that is no
23 longer in place.

24 We were a tenant under this -- at this location under
25 a 1993 lease which has been rejected, and so we're obviously no

1 longer operating there. But, there is, as the stipulation
2 points out, some remaining obligations to reconveyance
3 obligations. And so, the way we've agreed to resolve this
4 landlord's concern is to go ahead and give them a quit claim
5 deed for whatever rights we allegedly may have had.

6 We don't believe we have any rights in the property
7 because they were the economic benefit of what we sold, was
8 received back in the '90s, but in order to clean up title there
9 was some subdivision issues and the parcel next to the parcel
10 where we operated that they haven't been able to resolve until
11 recently, and now it's apparently legally right to be able to
12 execute certain conveyance documents.

13 But, the benefit to the estate here, Your Honor, is
14 that they're waiving a \$2 million lease rejection damage claim,
15 and they're also waiving other obligations related to attorney
16 fee sharing arrangement agreement. And so, we believe that the
17 stipulation is in the best interest of the estate and should be
18 approved. We have not received any objections, Your Honor.

19 THE COURT: Does any party wish to be heard in
20 connection with the debtor's motion? All right. That will be
21 granted.

22 MR. FOLEY: Thank you, Your Honor. Item Number 31 is
23 our seventh motion to reject certain executory contracts. The
24 contracts are listed, Your Honor, in the exhibit to the motion.
25 They're essentially service agreements, one with Amatore, Inc.

1 (phonetic), and then, two, with Direct Energy Business
2 Services. Your Honor, these are obviously agreements we no
3 longer have any use for, and we'd ask the Court to approve the
4 relief sought in the motion. We have not received any
5 responses.

6 THE COURT: All right. Does any part wish to be
7 heard in connection with the debtor's motion authorizing
8 rejection of the executory contracts? All right. That motion
9 will be granted.

10 MR. FOLEY: Thank you, Your Honor. With respect to
11 Items Number 32, 33, Your Honor, Mr. Fredericks will address
12 the Court with respect to Item Number 33, and counsel for the
13 landlord is also here, Mr. LeHane, who may want to address the
14 Court. But, as a preliminary matter, we did file this on short
15 notice, and Item Number 32 is our request to approve shortening
16 notice with respect to this motion. It is consensual and we
17 don't -- there have been no objections. We would ask the Court
18 to grant the relief with respect to shortening the notice
19 period in Item Number 32.

20 THE COURT: Does any party have an objection to
21 shortening the notice period? All right. That motion will be
22 granted.

23 MR. FOLEY: And, Your Honor, while I'm up here, since
24 Mr. Fredericks is also going to be addressing the Court with
25 respect to Item Number 35 which is our motion to approve

1 certain claim settlement procedures, I would ask the Court to
2 approve the procedural relief that we've sought in Items Number
3 34 which, again, is a motion to shorten time and notice with
4 respect to these procedures, as well as the Court granting an
5 expedited hearing to have it heard today.

6 Your Honor, the procedures set forth in Item Number
7 35 have been negotiated with the Committee, so they are an
8 approval with the procedures that are set forth in Item Number
9 35, so we think it's appropriate to grant the motion to shorten
10 time, and obviously the expedited hearing for today.

11 THE COURT: Does any party wish to be heard in
12 connection with the debtor's motion for an order shortening the
13 notice period and shortening -- and conducting the expedited
14 hearing? All right. That motion will be granted, as well.

15 MR. FOLEY: Thank you, Your Honor.

16 THE COURT: That's Item Number 34, right?

17 MR. FOLEY: Yes.

18 THE COURT: Okay.

19 MR. FOLEY: And actually, if you look at 35(a), I
20 think our motion for an expedited hearing is set forth as a
21 sub-motion under 35.

22 THE COURT: That's why I was asking.

23 MR. FOLEY: Thank you, Your Honor.

24 THE COURT: All right.

25 MR. FREDERICKS: Good morning, Your Honor. Ian

1 Fredericks of Skadden Arps Slate Meagher & Flom on behalf of
2 the debtors. With respect to matter 33 which is the debtor's
3 motion to enter into two agreements modifying a certain lease
4 with AAC Cross County Mall, LLC, by way of background, Your
5 Honor, this -- the lease was the lease associated with the
6 debtors Yonker Super Store. It was Lease Number 3699.

7 Back in connection with the February lease procedures
8 motion, the debtor solicited bids for this particular location.
9 In connection with that motion and by the bid deadline, the
10 landlord submitted the only bid. The bid was for a waiver of
11 pre-petition claims, including rejection damage claims,
12 following the auction, and no other submission of bids.

13 The debtors ultimately sought approval of a lease
14 termination agreement with the landlord, and on March 23rd the
15 Court entered an order to that effect. Recently, the end of
16 June or early July, counsel to debtors was approached by
17 counsel to the landlord to determine whether or not the debtors
18 would be amendable to seeking, basically to amend that lease
19 termination agreement and reinstate the lease, and thereafter
20 enter into an assumption and assignment agreement with a
21 proposed assignee.

22 Essentially, the landlord was approached by a party
23 that was interested in leasing that space. That party was
24 interested in taking the old Circuit City lease as opposed to
25 entering into a new lease. The landlord was amenable to that,

1 approached the debtors, and after negotiations the landlord
2 ultimately agreed to basically waive the remaining claims which
3 were essentially the landlord Subrand (phonetic) and other
4 administrative claims for taxes that had accrued and not yet
5 been paid and various other asserted claims. The landlord has
6 asserted that those claims are in excess of \$140,000.

7 Ultimately, after discussions with the Committee
8 providing the relevant pleadings to the Committee, for their
9 input the debtors determined that it was in the best interests
10 for their estates to proceed with the instant motion which
11 seeks to -- seeks approval of the two agreements, 1) to modify
12 and reinstate the lease, and 2) to assume, assign and sell the
13 lease to the assignee.

14 As Mr. Foley mentioned, the landlord's counsel is in
15 the courtroom. The landlord does support the relief requested.
16 There have been no objections. The Committee has no objection
17 to this, as well, and ultimately the benefit to the estate is
18 a, what amounts to between the two agreements a collective
19 waiver of all claims against the estate associated with the
20 lease.

21 THE COURT: In the amount of \$140,000, approximately.

22 MR. FREDERICKS: That would be the most recent. As a
23 result of the lease termination agreement, the rejection -- any
24 rejection damage claims or any pre-petition unsecured claims
25 had already been waive. So, it amounts to a complete claims

1 waiver.

2 THE COURT: All right. I understand the benefit to
3 the estate. What I didn't understand was why it made any
4 difference why they couldn't enter into their own new lease as
5 opposed to having the assumption and assignment of the old
6 lease. Why couldn't they just enter into a lease that was the
7 same as the Circuit City lease? I just had trouble connecting
8 those dots.

9 MR. FREDERICKS: As I understand it, Your Honor, and
10 I'll let landlord's counsel speak to it more specifically or
11 clarify it, as I understand it, the Circuit City lease had
12 certain use provisions that are beneficial to the assignee that
13 may or may not be available now if a new lease were entered
14 into.

15 THE COURT: Oh, okay. That makes good sense. I
16 understand.

17 MR. FREDERICKS: That's the reason that we've been
18 given, and I don't know if you'd like to hear from landlord's
19 counsel to see if there's any further explanation.

20 THE COURT: All right. Does any party wish to be
21 heard in connection with this matter?

22 MR. LeHANE: Good morning, Your Honor. Robert
23 LeHane, Kelley Drye and Warren on behalf of the landlord, AAC
24 Cross County, LLC. I absolutely agree with all the way the
25 transaction has been described and the way Mr. Fredericks

1 described the benefit. The assignee to require taking the
2 existing lease, and there were other benefits. Frankly, the
3 landlord was comfortable with that lease, and all the parties
4 wanted the transaction to go smoothly. And there would be
5 significant delay whenever you're renegotiating a new lease and
6 drafting a new lease. So, this allowed all the parties to have
7 a new transaction and get the assignee into the space as soon
8 as possible.

9 THE COURT: Excellent. Okay. Well, I'm glad we've
10 got a tenant in that space. All right. Does any other party
11 wish to be heard in connection with this matter? All right.
12 The Court will grant the motion.

13 MR. LeHANE: Thank you, Your Honor.

14 MR. FREDERICKS: Skipping over matter 34, which was
15 the motion to shorten, and turning to the settlement
16 procedures, by way of background, Your Honor, what we -- what
17 the debtors did here was reviewed various settlement procedures
18 that have been approved by this Court and other Courts, and
19 tried to establish something that would streamline the process.

20 We ultimately provided a draft to the Committee in
21 advance of the deadline to file the motion to get it on for
22 the -- for this hearing on regular notice. The Committee asked
23 us to hold off on filing so they could provide comments prior
24 to it being filed, and ultimately consented to having it heard
25 on shortened notice.

1 After negotiations with the Committee we arrived at a
2 consensual form procedures which are set forth in the motion,
3 and I'll provide you with a brief summary and then ask if you
4 have any additional questions. It basically sets up a notice
5 procedures concept that, depending on the tier that the
6 settlement agreement falls under, notice would either be five
7 days or ten days. We have -- rather than provide business days
8 as opposed to other days, we've said that the notice procedures
9 in any time frames are governed by the Bankruptcy Rule 9006.
10 That was the easiest way to just -- to make sure that
11 everything was consistent.

12 THE COURT: Which, of course, changes later this
13 year.

14 MR. FREDERICKS: I'll need to look at that to see how
15 it impacts it, but --

16 THE COURT: Okay. Just commenting is all. I assume,
17 then, that the new time table will adjust whenever the new rule
18 goes into affect?

19 MR. FREDERICKS: I believe that would be the case,
20 but I'd have to confirm. Either way we'll certain confer with
21 the Committee, and to the extent that changes need to be made
22 to make sure they're consistent and clear we'll do so.

23 THE COURT: All right.

24 MR. FREDERICKS: The -- it also -- in addition to
25 those five and ten-day time frames, there's a concept in here

1 where a party, before the expiration of the applicable time
2 frame, can make a request for additional time. Any debtors --
3 and by making that request the party would automatically be
4 granted an additional five days. One of the concerns the
5 Committee had was, if they had requested additional
6 information, they didn't want to have to object within that
7 five-day period if that additional information had not been
8 provided.

9 So, we've made it the later of the five days, or
10 three days following when that information was provided.
11 The -- it provides for notice to counsel to the Committee, the
12 Office of the United States Trustee, and then the core 2002
13 list in this case. Otherwise, no other party except an
14 affected party would receive notice of the settlement.

15 The two-tier -- there are two tiers with respect to
16 disputed claims, and then two tiers with respect to what I'll
17 call cause of action and receivable claims which are the
18 debtor's causes of action and other type receivable claims.
19 With respect to the disputed claims, Tier 1 is the resolution
20 of any claim that would result an allowed claim of \$500,000 or
21 less. That's irrespective of whether it's an unsecured or an
22 administrative claim. And then anything over 500,000 would
23 fall into Tier 2.

24 The -- with respect to the causes of action and
25 receivable claims, Tier 1 is any claim or -- I'm sorry -- is

1 any cause of action or receivable that where the compromise is
2 greater than -- results in a recovery greater than 75 percent
3 of the debtor's estimate of what they could recover through
4 litigation, or results in a payment of less than a million
5 dollars.

6 Tier 2 is anything over a million dollars, or
7 anything that results in a compromise, and it results in a
8 compromise where the debtor's compromising more than 25 percent
9 of the claim. So, it's less than 75 percent of the debtor's
10 value.

11 The procedures are designed to basically streamline
12 the process so that the debtors do not need to go through the
13 additional burden and cost associated with filing a separate
14 9019 motion for each settlement. They're designed to be broad
15 enough to encompass pretty much any kind of settlement. The
16 debtors reserve the right to seek 9019 -- specific 9019 relief
17 if they deem it appropriate, but otherwise I imagine that
18 nearly every settlement would fall under these procedures.

19 One additional -- the procedures to not require a
20 separate order for after the notice period has run. There's a
21 concept built in of a certificate of no objection or a
22 certificate that the objection has been resolved that we would
23 file on the docket to indicate that the period is run, there's
24 no further time, and essentially the settlement has become
25 final. At that point in time, or after the period runs, the

1 settlement would deem to be a final order for purposes of an
2 appeal -- for purposes of the appeal period running.

3 One thing that isn't mentioned in the motion, but the
4 debtors would request that the Court allow is to the extent
5 that a party really did want an individual order, the debtors
6 would like to have the ability to present a consensual form of
7 order approving the stipulation to the Court through the BOPS
8 system as opposed to going by separate motion.

9 Unless the Court has any questions I believe that
10 concludes my presentation on this motion and the debtors would
11 request that the Court enter an order approving the relief
12 requested.

13 THE COURT: All right. I'd like to hear from the
14 Committee on this motion.

15 MS. TAVENNER: Good morning, Your Honor. Lynn
16 Tavenner with the firm of Tavenner & Beran appearing on behalf
17 of the Committee. Mr. Fredericks is accurate. This has been
18 something that the Committee has spent considerable amount of
19 time looking at with respect to the underlying procedures. At
20 this point we believe that the motion that's presented today
21 effectively balances the interest of the estate in obtaining
22 some streamline procedures with the individual rights of the
23 claimants that would be affected, and we have no objection to
24 the relief that is requested.

25 THE COURT: All right. Thank you, Ms. Tavenner.

1 Does any other party wish to be heard in connection with the
2 debtor's motion? All right. The Court has reviewed the
3 procedures and such and I think that it makes good sense, and
4 so the Court will grant your motion.

5 MR. FREDERICKS: Thank you, Your Honor. I believe
6 Mr. Foley will be handling the remainder of the agenda. Thank
7 you.

8 MR. FOLEY: Your Honor, Item Number 36 on the docket,
9 this is the motion by Schimenti Construction Company. I spoke
10 to Mr. Perkins last night and this morning about at least a
11 partial resolution of this motion.

12 As Your Honor has probably gleaned from the papers,
13 our concern is that this is an improper use of Rule 2004 with
14 respect to just trying to accelerate claims reconciliation and
15 resolution which would, we think, would set a pretty bad
16 precedent in the case. But, in any event, in order to avoid
17 having to have this heard today, Mr. Perkins and I have agreed.
18 We produced some documents to him this morning, in fact, some
19 hard files that we had.

20 They're looking for some construction files relating
21 to two locations, one in North Plainfield, New Jersey which was
22 a location that was under construction at the time that we
23 filed. We never opened it. And one was in New York City that
24 we operated for a brief period of time. And there are unpaid
25 claims that are owed to Schimenti. We've been reconciling

1 those claims.

2 One claim is under objection which is an alleged
3 503(b)(9) claim. The question with that claim, it's about
4 \$45,000, is whether it's goods or services, which is one of the
5 matters that we will be addressing on August 27th. The other
6 claim is just a general unsecured claim, and we've reconciled
7 all except for about \$17,000 of that claim.

8 But, again, in order to avoid having Your Honor hear
9 this motion, and we hope to make it moot by August 27th, we
10 have regained access to a database where all of our
11 construction files were called Exposite.com, and we're working
12 to get access to that site to see if we can't download whatever
13 files they want to look at and see if that obviates the need
14 for a 2004 examination. But, if it doesn't, then we'll be back
15 here on August 27th.

16 So, basically, Your Honor, we would ask the Court to
17 adjourn Item Number 36 until the August 27th hearing date. Mr.
18 Perkins left before court. He said he didn't need to stick
19 around and just asked me to represent that that's what they
20 would like to do.

21 THE COURT: Okay. That request be granted. This
22 matter be adjourned to August 27th.

23 MR. FOLEY: Thank you, Your Honor. Item Number 37,
24 Your Honor, is our motion to establish bidding procedures and a
25 sale process for certain real estate that the debtors own in

1 Marino Valley. Your Honor, this is -- the proposed stalking
2 horse bidder here is 99 Cents Only stores. The parcel is 3.5
3 acres. The proposed purchase price is 2.25 million. There has
4 been a deposit paid of 225,000.

5 We're asking the Court today only to approve
6 procedures by which we can sell this property. Part of the
7 procedures is a request for an expense reimbursement to the
8 extent that 99 Cent Only stores is not the successful purchaser
9 of \$35,000. We believe that is reasonable, Your Honor.

10 the other procedures that we have requested the Court
11 to approve is that qualified bids be of a minimum amount of
12 \$2.35 million and require a \$235,000 deposit, an irrevocable
13 offer on the similar form, this is stalking horse, and that
14 those bids be received by August 13th at 5 p.m. And to the
15 extent there are any qualified bids an auction will be held on
16 August 20th with a sale hearing to confirm the sale to the
17 winning bidder on August 27th.

18 Your Honor, there was an objection filed by Lowe's
19 stores as Your Honor saw. This was filed by Mr. Ackerlee
20 (phonetic) and an abundance of caution about the timing and the
21 date and what we were seeking today, but he and I also spoke
22 this morning and he -- we've agreed that to the extent we
23 cannot resolve their underlying objection, Your Honor, which
24 involves a second sign easement agreement with Lowe's stores,
25 there is a sign easement agreement with the developer that's

1 being transferred as part of this proposed sale, but there's a
2 second sign easement agreement with Lowe's.

3 And there have been discussions already between the
4 prospective purchaser and Lowe's about how we can best convey
5 that agreement either through 365 or through a sign agreement
6 or -- it really may depend on who the winning bidder is,
7 obviously here, because we're still trying to maximize the
8 value of the underlying real estate.

9 So, we have agreed to adjourn their objection until
10 the August 27th hearing date to the extent it's not resolved by
11 then, but we anticipate that it will be resolved. But,
12 otherwise, Your Honor, we would ask the Court today to simply
13 approve the procedural relief, setting up the bid process, and
14 we have not received any objections, Your Honor.

15 THE COURT: And the objection of Lowe's did not
16 appear to go to the procedural aspects.

17 MR. FOLEY: Correct. Mr. Ackerlee just filed it
18 because he wasn't sure whether substantive objections to the
19 underlying motion were due for this hearing or for the August
20 27th hearing date.

21 THE COURT: Very good. Does any party wish to be
22 heard on the debtor's motion for an order approving bidding
23 procedures for the sale? All right. Those bid procedures will
24 be approved and the motion will be granted.

25 MR. FOLEY: Thank you, Your Honor. Mr. Blanks from

1 my office will be addressing the Court with respect to Items
2 Number 38 through 59 which is the status of our omnibus claim
3 objections. But, when we were here last time, Your Honor, we
4 advised the Court that we wanted to have the Court rule on a
5 particular issue relating to the 503(b)(9) objections under
6 omnibus objection Number 5 and 6, and this was the issue of
7 what constitutes a good, what the right definition of good is,
8 whether you adopt the ECC definition, whether or not you adopt
9 the predominant purpose test, or whether or not you can
10 segregate a claim that's part services and part goods and have
11 part of it allowed.

12 Anyway, Your Honor, we just wanted to advise the
13 Court that we did file a notice of hearing yesterday in which
14 we gave specific notice to every party that filed a response to
15 omnibus objection Number 5 and 6 on that issue that to the
16 extent anybody wanted to file supplemental papers to what's
17 already been filed they can file them before the August 27th
18 hearing date. And we will be seeking the Court to make a
19 ruling on the August 27th hearing date as to that so that we'll
20 have the proper guidance going forward with respect to these
21 claims.

22 THE COURT: Very good.

23 MR. BLANKS: Good morning, Your Honor. Dan Blanks on
24 behalf of the debtors. The next item below on the agenda are
25 Items Number 38 through 59 which are the debtor's omnibus

1 objections to claims.

2 To date, Your Honor, there have been 15,148 proofs of
3 claim filed in the debtor's bankruptcy cases. This includes
4 all of the 503(b)(9) claims, as well as the general unsecured
5 claims, as well as administrative claims secured in priority.
6 The debtors are continuing to review their -- all of these
7 claims and reconcile the asserted liabilities with their books
8 and records.

9 To date we have filed 26 omnibus objections to
10 claims. In those 26 omnibus objections to claims, Your Honor,
11 we have sought the disallowance of approximately 2,400 claims.
12 In addition, Your Honor, pursuant to those 26 omnibus
13 objections, we've sought the reclassification of approximately
14 2400 claims.

15 Currently, Your Honor, there are omnis 2 through 23
16 up for status at this morning's hearing. Omnis 2 through 10
17 are -- have been adjourned from previous omni hearings and are
18 up for additional status today. We would ask the Court to
19 adjourn the status hearing on those particular omnis over to
20 the August 27th omnibus hearing date.

21 With respect to omnis 11 and 23 which are listed at
22 Agenda Items Number 47 through 59, they are up for status at --
23 for the initial time at this morning's hearing. Your Honor,
24 with respect to omni Number 11 -- in omni 11 and on the 12, we
25 sought the disallowance of certain claims with respect to

1 pension claims and 401(k) plans claims. In omni 11 we sought
2 the disallowance of 276 claims, and there were nine responses.
3 With respect to omni Number 12, we sought the disallowance of
4 275 claims, and there were 13 responses.

5 With respect to omni Number 13, we sought the
6 disallowance of certain amended claims. Included in that omni
7 objection there were 47 claims and there were two responses.
8 With respect to omni Number 14 which we sought the
9 reclassification of certain non-good 503(b)(9) claims, we
10 included 17 claims in that omni objection. There were zero
11 responses.

12 With respect to omnis 15, 16, 17 and 18, we sought
13 the reclassification of certain equity holder interest claims,
14 reclassification to interests. In omni 15 there were 500
15 claims and we received 11 responses. With respect to omni 16,
16 there were 500 claims included in that objection and we
17 received 13 responses. With respect to omni 17, we included
18 500 claims in that particular objection and we received 11
19 responses, as well.

20 With respect to 18, we included 27 claims in that
21 objection and we received three responses. With respect to
22 omni 19, we sought the reclassification of certain
23 mis-classified claims to general unsecured claims. Included in
24 that objection were 196 claims and we received 29 responses.

25 With respect to omni Number 20, we sought the

1 reclassification of certain 503(b)(9) claims for goods not
2 received within the 20 days to meet the definition of
3 503(b)(9). Included in that objection there were 94 claims.
4 We received 13 responses. With respect to omni 21, we sought
5 the disallowance of certain duplicative claims. Included in
6 that objection were 53 claims and we received three responses.

7 With respect to omni 22, these are omni -- these are
8 claims for which we thought the liability was asserted against
9 the improper debtor, and included in that objection there were
10 36 claims and we received six responses. And lastly, Your
11 Honor, in omni Number 23 we sought the disallowance of certain
12 duplicative 503(b)(9) claims. Included in that objection were
13 36 claims and we received eight responses.

14 With respect to all of the claims for which a
15 response was filed with respect to omnis Number 11 through 23
16 we would ask the Court to adjourn that hearing over to the
17 August 27th hearing. With respect to the claims for which no
18 response has been filed, we'd ask the Court to order the relief
19 requested in the omni objection. And what we would propose is
20 to submit a single order for each individual omni with
21 different exhibits, one for the adjournment and the other one
22 for the ordered language.

23 THE COURT: All right. Very good. Now -- and just
24 so our courtroom deputy would be able to docket all of this
25 correctly, I'd like to go through just by docket numbers so

1 that we can make sure that I understand the relief you're
2 requesting. And as I understand it we pick that up with Docket
3 Number 47 --

4 MR. BLANKS: Yes, Your Honor.

5 THE COURT: -- which begins with your 11th omnibus,
6 and that's the one where you're asking for relief to be granted
7 in connection with that objection for all of the parties that
8 did not file any response.

9 MR. BLANKS: Yes, Your Honor.

10 THE COURT: And then carry over to August 27 --

11 MR. BLANKS: Yes, Your Honor.

12 THE COURT: -- any matters where a response was
13 filed.

14 MR. BLANKS: Yes, Your Honor.

15 THE COURT: Okay. And now, Number 48, we're going to
16 do exactly the same thing there?

17 MR. BLANKS: Yes, Your Honor.

18 THE COURT: 49, we're going to do exactly the same
19 thing there?

20 MR. BLANKS: Yes, Your Honor.

21 THE COURT: That's Number 13 omnibus. Number 50,
22 we're going to do the same thing there?

23 MR. BLANKS: Number 50 is the only caveated one.

24 There were no responses filed to that particular omnibus
25 objection, so there will be no adjournment to that particular

1 omni.

2 THE COURT: Right. I made that note as we went
3 through, but obviously, yes, the same thing had there been a
4 response.

5 MR. BLANKS: Yes, Your Honor.

6 THE COURT: Number 51 would be the same thing?

7 MR. BLANKS: Yes, Your Honor.

8 THE COURT: Okay. And 52, relief be granted. For
9 those that did not file a response carried over to August 27th
10 for those who did?

11 MR. BLANKS: Yes, Your Honor.

12 THE COURT: And 53 would be the same?

13 MR. BLANKS: Yes, Your Honor.

14 THE COURT: 54 will be the same. 55 will be the
15 same. 56 will be the same. 57 is the same. 58 is the same,
16 and 59 is the same.

17 MR. BLANKS: Yes, Your Honor.

18 THE COURT: All right. Now, let's -- what are we
19 doing with the omnibus Number 38 through 46?

20 MR. BLANKS: 38 through 46. What's currently up for
21 status are the claims for which a response was previously filed
22 and was up for a previous status hearing at a previous omni
23 hearing. We'd ask the Court to adjourn those matters over to
24 August 27th, as well.

25 THE COURT: So, all of those matters are being

1 adjourned over to -- Items 38 through 46 are being adjourned to
2 the 27th?

3 MR. BLANKS: Yes, Your Honor.

4 THE COURT: Very good. I understand. Thank you.

5 MR. BLANKS: Thank you.

6 MR. FOLEY: Your Honor, Items Number 60 through 71
7 are fee applications for professionals, Your Honor. With
8 respect to the debtor's professionals, they are Items Number --
9 Docket Items Number 60 through 67, and these are all second
10 interim fee applications, and -- except with respect to
11 Rothschild which I'll describe in a minute, Your Honor, all of
12 the debtor's professionals, and as well as the Committee's
13 professionals except for Jefferies which the Committee counsel
14 can address, covered the period of February 1st through April
15 30th, 2009. And with respect to Rothschild, Your Honor, the --
16 this is their second and final fee application. There is an
17 adjustment. Your Honor, I have --

18 THE COURT: And that's Number 67 if I --

19 MR. FOLEY: 67, Your Honor.

20 THE COURT: All right.

21 MR. FOLEY: Your Honor, I do have a -- if I could
22 hand up to the Court a demonstrative exhibit that has --
23 provides a summary of all the different fee applications. Your
24 Honor, there is an adjustment to the numbers that are on the
25 chart that I showed Your Honor with respect to Rothschild.

1 There was an issue with respect to the calculation of value
2 attributable to the earn-out portion of the sale price of the
3 IP assets that Rothschild was involved in. And when the
4 company received their fee statements they questioned how they
5 calculated some of the valuations. And the end of those
6 negotiations resulted in a downward adjustment in the value
7 which had a similar affect on reducing the fee because it was a
8 percentage off of the value.

9 So, essentially the -- if you look at the Rothschild
10 number, Your Honor, which is Docket Item Number 67, that number
11 will be reduced by \$23,000 because there was a million dollar
12 adjustment off of the value and the fee is 2.3 percent off of
13 the value. So, that -- when we submit orders, Your Honor, with
14 respect to -- if Your Honor approves these, the Rothschild
15 order will be \$23,000 less than the number in that far right
16 column.

17 Your Honor, the -- we've also included for
18 convenience the -- a summary of -- which I have provided to
19 counsel of the Committee -- of all of the professional fee
20 applications for the Committee professionals, as well. Your
21 Honor, we have not received any objections from any parties or
22 the United States Trustee, and we would ask the Court to grant
23 the applications as set forth on the agenda. Unless the Court
24 has any questions.

25 THE COURT: All right. Very good. Does any party

1 wish to be heard in connection with the fee applications
2 concerning the debtor's professionals? This is Items Number 60
3 through 67 on the agenda. All right. Mr. Foley, the Court has
4 reviewed these fee applications and I find them to be in order,
5 and with the adjustment that you represented with regard to the
6 Rothschild application, the Court will approve the applications
7 as they have been submitted.

8 MR. FOLEY: Thank you, Your Honor.

9 MS. TAVENNER: For the record again, Lynn Tavenner,
10 Your Honor, appearing on behalf of the remaining Agenda Items
11 68, 69, 70 and 71. And, Your Honor, Mr. Foley was so kind to
12 include in his demonstrative exhibit the amount of the fees
13 that are requested by the various professionals on behalf of
14 the Committee, as well.

15 My firm did file a notice with respect to the four
16 fee applications. Those notices do include the exact same
17 numbers that are on the demonstrative exhibit before you. Your
18 Honor also would note that with respect to the applications
19 there are two for -- there's an application for Pachulski
20 Stang, as well as my firm as counsel -- co-counsel to the
21 Committee.

22 There is Item 69, the application for Protiviti,
23 Inc., financial advisor for the Committee who is continuing in
24 an ongoing position, as well as Item 71 which is the final
25 application for Jefferies & Company. Given where we are in

1 this -- the case at this point, the services of Jefferies &
2 Company are no longer needed going forward.

3 I would also note, Your Honor, that Mr. Rob Smith
4 from Protiviti is in the courtroom, and in addition, Jefferies
5 & Company does have representatives on the phone in the event
6 that you have any specific questions. I would note that we
7 received no objections. The matter was properly noticed, and
8 we would respectfully request that Your Honor enter an order
9 approving all four of the applications as presented.

10 THE COURT: All right. Very good. Does any party
11 wish to be heard in connection with the applications for
12 compensation on behalf of the Committee's professionals?

13 (No audible response)

14 THE COURT: All right, Ms. Tavenner, the Court has
15 reviewed the applications, and I must say, I find them to be,
16 you know, very reasonable in light of the applications of the
17 debtor's professionals in the case. It's certainly
18 well-proportioned and I commend the good work that the
19 Committee has provided to the Court in this case and I will
20 approve the applications as they have been submitted.

21 MS. TAVENNER: Thank you, Your Honor. We'll tender
22 orders.

23 THE COURT: All right. Mr. Foley, is there any other
24 matter that we need to take up this morning?

25 MR. FOLEY: No, Your Honor. That concludes the items

1 on the agenda and we don't have any non-agenda items today to
2 bring up to the Court.

3 THE COURT: All right. And you're welcome to
4 continue expanding the size of the agenda so long as we keep it
5 proportional to the amount of time we have to spend dealing
6 with these matters.

7 MR. FOLEY: That sounds good to us, Your Honor.

8 THE COURT: It's always good when you work out these
9 matters, and so I commend you for the fact that you are
10 seemingly to do that.

11 MR. FOLEY: Thank you, Your Honor.

12 THE CLERK: All rise. Court is now adjourned.

13 * * * * *

14 C E R T I F I C A T I O N

15 I, KATHLEEN BETZ, court approved transcriber,
16 certify that the foregoing is a correct transcript from the
17 official electronic sound recording of the proceedings in the
18 above-entitled matter, and to the best of my ability.

19
20 /s/ Kathleen Betz DATE: July 30, 2009

21 KATHLEEN BETZ

22 J&J COURT TRANSCRIBERS, INC.

23

24

25 (CR)

J&J COURT TRANSCRIBERS, INC.